THE CONSTITUTIONAL ALLIANCE OF THE N.W.T.

AND

THE NUNAVUT AND WESTERN 'CONSTITUTIONAL FORUMS'

REPORT TO THE LEGISLATIVE ASSEMBLY

MARCH 4, 1983.

SUMMARY

The mandate of the Constitutional Alliance of the Northwest Territories and the Western and Nunavut Constitutional Forums is as follows.

The task of the Alliance is to tentatively identify an acceptable boundary for division, submit to a forum of public ratification, then negotiate the outcome with the Federal Government. The mandate of each Forum is to develop a proposal for political development for the newly created jurisdiction. Some of the issues they will address themselves to include style, form and structure of government, powers and jurisdictions and the protection of aboriginal rights. The process is to include public consultation, the development of proposals, further public consultation, public ratification, then finally the negotiating of the ratified package with the Federal Government. Note that some of the approved changes may be possible within the framework of the current N.W.T. Act.

The relationship between the Constitutional Alliance and the Forums is simply that the joint membership of the two Forums constitute the Alliance. The relationship between the Forums is co-operation and mutually supportive. However, in most respects their actual mandates to operate are independent of each other. Each Forum will develop and negotiate its' ratified constitutional package separately with the Federal Government nor do their timeframes need to be the same. The only condition is that the Alliance must have settled the question of boundary before either Forum can either ratify or begin the negotiation of its proposal with Ottawa.

Notwithstanding their official independence, both Forums do appreciate the need to co-operate with and support each other. Invitations to each others' meetings and the sharing of research, ideas and resources are examples of this relationship. Even though the two models of government which eventually emerge will not be the same, they share enough that the work of one Forum is virtually guaranteed to be of value to the other.

Progress to date has been significant especially when one considers that the Alliance and Forums have yet to receive any Federal funding. The Alliance has determined its mandate, agreed on a process for selecting a boundary and scheduled its' first boundary meeting for early April.

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Perhaps its greatest accomplishment to date however has been to prove that representatives of such historically diverse interests can not only work together but do effectively. Certainly its existence has had significant impact on Ottawa as evidenced by its willingness to accept the mandate of the Alliance and Forums.

The Forums have succeeded in developing their own terms of reference, detailed action plans and budgets, all of which have been submitted to the Federal Government. The Nunavut Constitutional Forum has generated several research proposals and, with the financial assistance of the Government of the Northwest Territories, these projects are well underway. And all are scheduled for completion within the next 2 - 4 weeks. A draft constitution for a Nunavut Government is expected to be ready for distribution in April. The Western Constitutional Forum has contributed to the generation of series of research proposals as well. These projects have been developed and implemented in co-operation with the Special Committee on Constitutional Development which is actually sponsoring the work for its own purposes with funding from the Legislative Assembly.

However, the critically important process of public consultation has not yet begun, the entire reason being the absence of funds. The Forums hope to have funding by April 1, 1983 at which time the action plans could be fully implemented.

Integration and Co-ordination of Legislatures approval to Constitutional Development

The Constitutional Alliance and its two Forums were designed and established to be the prime spokesmen for constitutional change within the N.W.T. All major institutions are represented and the consensus model of decision making provides for an orderly and disciplined approach without either institution having to compromise on its mandate. The work plans, process and timetable for each Forum have been developed with the foregoing in mind.

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The Constitutional Alliance and two Forums is one of three instruments of the Legislative Assembly with a mandate in the area of Constitutional Development within the N.W.T. In the Western N.W.T. there has been a high level of co-operation between the Special Committee on Constitutional Development and the Western Constitutional Forum. As noted in our report we are sharing the work on seven research projects.

Members of the NCF expressed concerns to the Co-chairperson of the Special Committee on Division over its expanding research parameters and made recommendations to resolve them. The matter was discussed with Mr. Braden and it was agreed that with good co-operation and information sharing, the work of the Special Committee should complement the work of the Alliance and Forums.

A committee, comprised of Legislative Assembly members and the leaderships of the Dene Nation, Metis Association of the N.W.T., the Inuit Tapirisat of Canada and the Committee for Original Peoples' Entitlement, met in February 1982 to form the Constitutional Alliance.

When the groups first met they established a set of common principles and objectives to be shared by all parties. They agreed to support division of the N.W.T., to promote a YES vote in the April plebiscite on division and to stress the principle that initiatives for political and constitutional change must originate in the North. They agreed to provide a forum to facilitate public participation in the process of political development, to develop common positions, and to negotiate publicly ratified proposals for constitutional reform with the Federal Government. Furthermore, they agreed to spearhead the initiation of political and administrative reforms possible within the limits of the current N.W.T. Act. The Constitutional Alliance members agreed that the results of the April plebiscite would steer future activities of the Alliance.

The Legislative Assembly, in February 1982 unanimously passed a motion in the Committee of the Whole supporting the Constitutional Alliance as a Working Group, and accepting its' mandate to consult the public on political reform, develop proposals for political development, seek public ratification, then negotiate the outcome with Ottawa.

The result of the April 14, 1982 plebiscite was 56.5 - 43.5 in favour of division.

The Legislative Assembly, in May 1982 passed Motion 7-82(2), by which it accepted the results of the plebiscite and indicated its' support for division.

When the Constitutional Alliance met in July 1982 and as a result of the April 14, 1982 plebiscite favouring division, they decided that the mandate of the Alliance could best be realized by the formation of two sub-committees, one for the Western Northwest Territories and one for the East.

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The Western Constitutional Forum or WCF would be comprised of the Dene Nation, Metis Association of the Northwest Territories and two MLA's, while the Nunavut Constitutional Forum or NCF, would include the Inuit Tapirisat of Canada and the other two MLA's. One of the MLA's on each Forum was officially designated to represent the interests of the non-native population of the N.W.T., while the other was to represent the Legislative Assembly at large. It was agreed that decision making would be by consensus and all Forums decisions would be tentative until ratified by the public.

The Alliance members decided that COPE would have the option to participate in either one or both of the Forums. For its part, COPE was pursuing the development of the Western Arctic Regional Municipality as its immediate priority and saw this work proceeding in parallel with the work of both Forums. Given the unique circumstances of the Delta/Beaufort communities the WARM initiative was considered to be a valuable contribution to the development of constitution for the two new territories.

During the July 1982 meeting it was decided that the Alliance would retain the responsibility to tentatively select a specific boundary for division, submit its' recommendation to the public for ratification, then negotiate the outcome with Ottawa.

However, since there were two governments to establish and therefore two separate proposals to develop, the Alliance decided to delegate to each Forum the responsibility to spearhead this process within their region. The content of the work would include form, style and structure of each government, their powers and jurisdictions, and would investigate specific mechanisms to protect aboriginal rights established in land claims settlements on an ongoing basis. The process would involve once again public consultation, development of proposals, public ratification and negotiation with the Federal Government.

It was also agreed that the Alliance seek a statement from Ottawa accepting and committing itself to the principle of division of the N.W.T., that it recognize the mandate of the Constitutional Alliance, that each Forum meet

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separately at a later date to prepare budgets for submission to the Government of Canada, that the GNWT's Aboriginal Rights and Constitutional Development Secretariat act as the joint-secretariat until such time as indicated by each Forum, and that the Federal Government not establish their own Boundaries Commission until the Forums have completed their own review and are in a position to make a recommendation. It was agreed that the Alliance should meet with the Prime Minister and appropriate Cabinet Ministers to discuss all of the above once the budgets had been developed.

On July 29, 1982, the Executive Committee agreed to provide interim funding to the Alliance in an amount required to conduct one meeting of each of the Forums and one meeting of the full Alliance in Ottawa. The assumption then was that these meetings would grant the Forums the opportunity to obtain long-term funding from the Federal Government.

During August, September and October 1982, the two sub-committees met independently to work on individual Terms of Reference, Action Plans and budgets. The Nunavut Constitutional Forum at its founding meeting August 10 - 11 in Frobisher Bay agreed to a three phase process leading to the development of a constitution for Nunavut as follows:

- production and distribution of a discussion paper
- community consultation
- constitutional convention with representatives from all communities in Nunavut as well as MLA's and leader of native organizations.

The process would culminate with the major convention and a budget of $975,000 was approved.

The Western Constitutional Forum met with the Honourable John Munro on September 20, 1982 and briefed him on the structures and purposes of the Constitutional Alliance, the WCF and NCF and the opportunity northerners have to explore new governing institutions to meet the unique northern situation. The Minister was advised that requests for funding would be forthcoming in the near future and that the Constitutional Alliance would like to meet with the Minister and other Federal officials to discuss funding and related issues.

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Furthermore, members expressed their concern that the Cabinet's long-awaited policy paper on northern constitutional development might seriously limit northerners options for public government.

The Minister stated that the policy paper should be ratified by Cabinet within a few weeks, that he believed it would be a policy we could 'live with' and that he would welcome a meeting with the Alliance in Ottawa to discuss funding.

Meanwhile, the NCF had hired a research co-ordinator by contract, and he in turn, with the approval of the NCF, had hired several individuals to conduct specific research projects. Funding for this work was provided by the Government of the N.W.T. via the Aboriginal Rights and Constitutional Development Secretariat. Projects approved were:

- review of historical events in and about Nunavut over the past 30 years
- study on the Functional Division of Power in Canada
- examination of the relationship between a Nunavut Act, Land Claims Settlement Act and Crown Lands in Nunavut
- language guarantees.

The Nunavut Constitutional Forum met during October and November 1982 to discuss progress on research projects. Also, it agreed with the Western Constitutional Forum that a meeting to lobby Ministers and Members of Parliament at Ottawa, should take place in early December.

During the October 21 - 29, 1982 Western Constitutional Forum meeting it was decided that an independent secretariat employed directly by the WCF would conduct or co-ordinate WCF business. Also at this meeting, the WCF finalized a more detailed and comprehensive nine stage Action Plan.

They included the development of an Agreement in Principle for government in the Western N.W.T., dispersal of information to communities and travel to communities to seek advice and provide clarification, the initiation and supervision of independent research into topic areas relevant to political development, participation in the activities of the Constitutional Alliance, to select a boundary for division and development of a detailed Proposal for Political Development in the Western N.W.T.

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Also included were the public distribution of the Proposal and the conduct of official community hearings to obtain public reactions, the revision of the draft proposal in light of public input, the co-ordination of a public ratification process, and negotiation of the ratified proposal with the Federal Government.

It was anticipated that the first eight stages of the new Action Plan would be completed within eighteen months of the WCF receiving operating funds.

The WCF revised its previous budget proposal in light of the new Action Plan, the new total figure coming to $1,708,000.

It was also suggested at the October meeting that the WCF begin to develop a list of topics which would require research.

The WCF met in November 1982 to discuss the establishment of tentative baseline objectives it felt the Constitutional Alliance should pursue in its upcoming meetings with Cabinet Ministers and other Federal officials in December.

However, on November 26, 1982, the day before the Alliance members were to leave for Ottawa, the Federal Cabinet's Policy Statement on Constitutional Development in the N.W.T. was released by the Honourable John Munro.

The statement included support in principle for division of the Northwest Territories subject to four conditions. They were: a) continued support for division by a majority of its residents; b) the successful resolution of outstanding land claims in the N.W.T.; c) the achievement of consensus among northerners on the location of a boundary; and, d) consensus on the distribution of powers within each new jurisdiction between territorial, regional and community levels of government.

The Constitutional Alliance reconvened November 30 - December 6, 1982 at Ottawa. They met for one day to prepare a common position, then spend the remainder of the period meeting with Ministers John Munro, Mark MacGuigan and Jack Austin, Members of Parliament, and Senators from all parties and the national press.

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The message the Alliance agreed to present to all parties is as follows:

a) provide background information leading up to and including the formation and progress to date of the Constitutional Alliance, the two Forums and other factors related to them, such as the plebiscite on division;

b) note the positive aspects of the Cabinet policy statement; notably its support for division;

c) clarify some of the conditions placed upon this support;

d) note the critical factors ignored by the statement including revenue-sharing, a timetable for the gradual turnover of responsibilities for land and resource management and ownership, and the conditions which must be met from the Federal Government's perspective before either territory could assume full provincial status;

e) request formal recognition by the Federal Government of the mandate of the Alliance and the two Forums;

f) request Federal funding;

g) request that a formal mechanism for interface between the Cabinet and the Constitutional Alliance be established;

h) request acknowledgment that this process is only the first step along the road to provincial status.

The response from the Ministers, with particular emphasis on the Honourable John Munro's statements are as follows:

a) Land Claims do not need to be settled before division, but considerable progress must have been made;

b) adamant refusal to acknowledge that the process of division and the establishment of two new governments was directly related to an ongoing process leading eventually and inevitably to provincial status;

c) refusal to include the turnover of land and resource management and ownership as an aspect of the matter of division and the establishment of viable governments in each jurisdiction;

d) the Minister also excluded revenue-sharing as a topic, but others the Alliance spoke to, felt that the Federal Government might be open to some initiatives in this area;

e) all three Ministers stated that the Federal Government did recognize the mandate of the Alliance and the Forums;

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f) all agreed that this recognition implied the commitment to provide funds, however, Mr. Munro could not promise funding himself since the proposal would need to be considered by the fall Cabinet via the Social Development Committee. However, he did promise to expediate the process and also to consider providing some non-monetary support in the interim;

g) the request for a mechanism for interface between the Alliance and Ottawa was accepted in principle but that was not discussed in detail.

At a meeting later in December, the WCF appointed an interim director to act in the capacity until funding had been received. The request was made and accepted by James Wah-Shee that the GNWT would support financially the WCF in its research projects to a level comparable to that already being provided to the NCF.

The Director, it was decided, would draft a series of research proposals based on topics provided by the WCF, and help organize a meeting for February at which the Native associations could begin to discuss the question of a boundary from an aboriginal land-use perspective. It was noted that the WCF research proposals were probably equally relevant to the Special Committee on Constitutional Development which was currently planning its Third Conference on Constitutional Development in the Western N.W.T. Accordingly, it was decided that the WCF should recommend that the Special Committee postpone its conference until June by which time the research projects would have been completed.

During the December meeting concern was expressed that the Legislative Assembly's Special Committee on Division appeared to be in the process of broadening its mandate to include issues which were part of the mandate of the Alliance and Forums and that this could result in duplication of effort and expense, and furthermore, could lead to confusion in the eyes of the public. Finally, it was agreed that the Alliance and Forums should attempt to incorporate themselves via legislation passed in the Legislative Assembly

The Nunavut Constitutional Forum then met in Tuktoyaktuk on January 11 - 12, 1983. This was the first meeting, Alliance or either Forum, attended by COPE since the Alliance had met the previous July, although COPE had participated in three tele-conferences sponsored by the NCF. COPE stated that it was willing

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to work with the NCF if the NCF would guarantee that COPE's Western Arctic Regional Municipality concept would be included in their proposal for a Nunavut Constitution. The NCF members agreed and COPE formally agreed to put forth its position on political development via the Nunavut Constitutional Forum.

In addition to reviewing progress on their research projects, the NCF supported the idea of the special ordinance to incorporate the Alliance and Forums, be put forth. Finally, they also noted with concern the apparent overlap between the mandate of the Alliance and Forums and the work plan of the Special Committee on Division of the N.W.T.

The WCF, meeting in early February 1983, reached general agreement that the GNWT and the Native associations should work closer together in order to develop common positions and strategies for the First Ministers' Conference on Aboriginal Rights.

It was decided that the Honourable John Munro be contacted immediately to expediate the funding process, that a position on the Federal constituency boundary issue for presentation at one of the Federal Electoral Boundary Commission community hearings be prepared, and in order to maintain a close contact with them, the NCF be notified of dates and locations of WCF meetings, and invite them to send an observer. Furthermore, all research papers should be exchanged between Forums in order that each could have the benefit of the others' efforts.

There was also general agreement on the seven research proposals outlined, however, it was stressed that an additional piece of research on the boundary should have top priority. Finally, the WCF passed a motion stating it supports division of the N.W.T. along a north-south axis and that it favours having the boundary issues resolved before the many other issues related to political development are finalized.

The NCF's next meeting was February 15, 1983 at Yellowknife. Among the many issues discussed the NCF stated once more its' feelingsthat the Legislative Assembly should limit the mandate and role of the Special Committee on Division

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of the N.W.T. but members also indicated that they were confident that the issue of overlap could be resolved fairly readily. It was decided that a high level of co-ordination and communication was required between the aboriginal rights negotiations and the work of the Forums, and, as a result ITC's second seat on the Forum was offered to the chairman of the Tungavik Federation of Nunavut (TFN). Finally, it was agreed that the essential issue of determining the Nunavut boundary should be the choice of the communities and furthermore that they should have available to them some information from the Forums on the type, form and style of government before they made a decision.

The full Constitutional Alliance met once again on February 16, 1983, the most significant outcome of the meeting being an agreement on a process for the selection of a boundary for division. The steps are as follows:

a) native associations meet privately to discuss the boundary question from the perspective of aboriginal land-use and occupancy and the issue of overlap;
b) the Constitutional Alliance would then attempt to reach a consensus amongst its members on the location of the boundary; the land-use element being only one of the factors which serves as criteria upon which to base the decision;
c) if the Alliance reaches a consensus it would submit its recommendation to the public for ratification in the form of an N.W.T.-wide plebiscite;
d) if the Alliance is unable to reach a consensus then it would consider alternate methods for resolving the issue including the possibility of recommending the establishment of an independent boundaries commission.

Travel to the communities for the express purpose of discussing the boundary would be undertaken by the Constitutional Alliance, not by either of the Forums.

The Honourable George Braden, Co-chairman of the Special Committee on Division of the N.W.T. was invited to discuss the role of the Committee. Alliance members expressed their concerns regarding the apparently overlapping mandate currently developing between the Special Committee and the Alliance and Forums. Mr. Braden indicated that he recognized the mandate of the Alliance and Forums to conduct the political and public activities of the process of division. He stated that his Committee's work was strictly of an internal and technical nature and would not involve public consultation.